

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SPEAR, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
FENKELL, et al.	:	NO. 13-2391

MEMORANDUM

In Doc. No. 637 the Fenkell Parties moved to exclude certain exhibits and related deposition testimony, as follows:

1. Deposition Exhibit 578 (bearing no bates stamp) as marked for the Alliance Holdings, Inc. Employee Stock Ownership Plan and Trust (the “ESOP”) deposition pursuant to Federal Rule of Civil Procedure (“Rule”) 30(b)(6) of Barbie L. Spear on April 15, 2016, and April 16, 2016. All testimony of the Alliance ESOP by its agent Barbie L. Spear in the designated deposition testimony of its Fed. R. Civ. P. Rule 30(b)(6) witness stated in reliance on Deposition Exhibit 578. All testimony of Alliance Holdings, Inc. (“Alliance”) by its agent Kenneth Wanko in the designated deposition testimony of its Fed. R. Civ. P. Rule 30(b)(6) witness stated in reliance on Deposition Exhibit 578.
2. All evidence and testimony relating to the validity of David B. Fenkell’s June 13, 2012, Employment Agreement (effective as of July 1, 2012,) as amended on September 25, 2012.
3. All findings of fact in *Chesemore, et al. v. Alliance Holdings, Inc., et al.*, Case No. 3:09-cv-00413-wmc (E.D.WI) in the trial court and on appeal (the “*Chesemore* Litigation”) regarding the Fenkell family finances with respect to Karen G. Fenkell.
4. The voicemail purportedly sent by Paul Sefcovic to David B. Fenkell related to the Advisory Services Agreement between Alliance Holdings, Inc. and Student Loan Management and Research Services, LLC found in the Alliance Parties’ proposed Exhibit 564 (PT_EDD_00043509) and Alliance’s Proposed Stipulation of Fact 143.

As to item 1, I will deny the motion to exclude, without prejudice to renewing an objection at the time of trial. The extent to which Alliance will rely on the deposition transcript, or the deposition exhibit, at trial, as opposed to live trial testimony or a R. 1006 summary chart, is unclear.

As to item 2, I will deny the motion to exclude. Testimony concerning David B. Fenkell's June 13, 2012 Employment Agreement may be introduced for several purposes. The extent to which the evidence may be taken into account by me in deciding issues common to both this case and a case now pending among some of the parties in the Philadelphia Court of Common Pleas is an issue that I can decide after hearing the testimony.

As to item 3, I will deny the motion to exclude. The extent to which I can take this evidence into account is an issue I can decide after hearing the evidence.

As to item 4, I will deny the motion to exclude the voicemail message, for reasons explained in my order resolving Doc. No. 634, the Sefcovic Parties' motion to exclude.

BY THE COURT:

s/Richard A. Lloret
HON. RICHARD A. LLORET
U.S. Magistrate Judge